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Legal Fences in Nebraska

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CORNHUSKER ECONOMICS

University of Nebraska–Lincoln Extension

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Institute of Agriculture & Natural Resources
Department of Agricultural Economics
http://agecon.unl.edu/cornhuskereconomics

Legal Fences in Nebraska

Market Report	Yr Ago	4 Wks Ago	8/19/11
Livestock and Products, Weekly Average			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight	$98.85	$108.38	114.08
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb.	133.00	148.00	151.84
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb.	119.86	135.00	138.17
Choice Boxed Beef, 600-750 lb. Carcass	158.47	178.50	185.05
Western Corn Belt Base Hog Price Carcass, Negotiated	80.90	98.93	98.09
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean	93.85	99.55	107.24
Slaughter Lambs, Ch. & Pr., Heavy, Wooled, South Dakota, Direct	134.00	192.00	178.75
National Carcass Lamb Cutout, FOB	303.02	408.30	410.93
Crops, Daily Spot Prices			
Wheat, No. 1, H.W. Imperial, bu.	5.25	6.95	7.34
Corn, No. 2, Yellow Omaha, bu.	3.77	7.28	7.29
Soybeans, No. 1, Yellow Omaha, bu.	10.08	13.80	13.75
Grain Sorghum, No. 2, Yellow Dorchester, cwt.	6.71	11.79	12.34
Oats, No. 2, Heavy Minneapolis, MN , bu.	2.62	3.71	3.71
Feed			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton.	135.00	180.00	185.00
Alfalfa, Large Rounds, Good Platte Valley, ton.	77.50	135.00	117.50
Grass Hay, Large Rounds, Good Nebraska, ton.	95.00	72.50	85.00
Dried Distillers Grains, 10% Moisture, Nebraska Average.	99.00	195.00	196.50
Wet Distillers Grains, 65-70% Moisture, Nebraska Average.	30.50	74.00	67.75

*No Market

Note: This newsletter is provided for educational purposes only - it is not a substitute for legal advice. For additional information regarding resolving fencing disputes, contact an attorney.

This week I received two telephone calls asking "What is a legal fence in Nebraska?" Our recent fencing statute - which requires all landowners to split the cost of a division fence 50/50, is probably the source of this interest. So this newsletter begins with a brief history of the legal fence's role in Nebraska fence law, and then lists the legal fence provisions in the 2011 Nebraska fence statutes.

Since 1867, Nebraska fence disputes were resolved by *fence viewers*: each neighbor would pick one fence viewer, and the two would pick a third (the tie-breaker). The three fence viewers would decide how much of the fence each neighbor should pay for. The fence viewers had the discretion to e.g., have cattlemen pay for most or all of the fence if the neighbor didn't have livestock. Or they could have said 50/50. Anyway, the type of fence that the neighbors had to share the cost on had to be a legal fence, unless they both agreed to a different type of fence.

Now, unfortunately, the fence viewer process is gone. Instead, there is a litigation process when neighbors can't agree on a fence. The current rule is, if at least one neighbor wants a division fence and wants to force the other neighbor to pay for part of it, (1) neighbors must share the cost of the division fence 50/50, no matter who has livestock and who doesn't, and (2) unless the neighbors pick a different type of

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fence (and it can be any kind of fence, not just a "legal fence"), the default division fence is a four wire fence.

Here are the legal fence definitions that are still part of the Nebraska fencing statutes.

NRS §34-115. Lawful Fences, Defined. Lawful fences of different kinds used for fence to enclose lands shall be as hereinafter defined.

(1) A rail fence shall consist of at least six rails, such rails to be secured by stakes at the end of each panel, well set in the ground, with a rider on the stakes.

(2) A board fence shall consist of not less than three boards of at least five inches in width and one inch thick; such boards to be well secured to posts; the posts to be not more than eight feet apart.

(3) A rail and post fence shall consist of at least three rails, well secured at each end to posts; the posts not to be more than ten feet apart.

(4) A pole and post fence shall consist of not less than four poles, to be well secured to posts; the posts not to be more than seven feet apart.

(5) A wire fence shall consist of at least four wires, of a size not less than number nine fencing wire, to be well secured to posts, the posts to be at no greater distance than one rod from each other; and there shall be placed between every two of the posts one stake or post to which the wire shall be attached. Any of such wires may be a barbed wire composed of two or more single wire strands twisted into a cable wire with metal barbs thereon averaging not more than five inches apart, each of such single wire strands to be of a size not less than number twelve and one-half gauge fencing wire.

(6) A hog and sheep tight fence shall consist of one barb wire at the ground, next above, one section of woven wire twenty-six inches high, consisting of not less than seven strands, the upper and lower strands to be number nine wire, intermediate strands to be number eleven wire with stays not more than twelve inches apart, and at the top, three barb wires at intervals of six, nine, and nine inches; and the whole shall be securely fastened to posts at no greater distance than one rod from each other, and there shall be placed between every two of the posts one stake or post to which the wire shall be attached.

(7) All other fences made and constructed of boards, rails, poles, stones, hedge plants or other material which upon evidence is declared to be as strong and well calculated to protect enclosures and is as effective for resisting breaching stock shall be considered a lawful fence. [Comment: This could include an electric fence.]

NRS §34-116. Lawful Fences; Height and Spaces. The fences described in section 34-115 shall be at least four and one-half feet in height; and in the construction of such fences the spaces between the boards, rails, poles and wires shall not exceed one foot each, measuring from the top.

NRS §34-117. Lawful Fences; Warner's Patent; Requirements. Fence known as Warner's Patent shall be at least four and one-half feet in height, and consist of not less than five boards; such boards to be of a width of not less than five inches, and one inch thick.

Most of these types of fences are probably not installed anymore. And neighbors can agree to any type of fence they want to, whether they are on the legal fence list or not. But if they can't agree, then they share 50/50 the cost of installing and maintaining the cost of a wire fence as defined by §34-115(5). Theoretically, I could put in a more expensive fence and pay for it myself. But if I want the neighbor to pay for part of my more expensive fence, the neighbor could only be required to pay for half of a four wire fence.

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